

REMARKS

This application has been reviewed in light of the Office Action mailed on May 28, 2008. Claims 1-18 and 20-30 are pending in the application with Claims 1, 18 and 21 being in independent form. By the present amendment, Claims 1, 18 and 21 have been amended, Claim 19 has been cancelled and new Claims 23-30 have been added. No new matter is believed to be introduced by the amendments. Support for the amendments is found on page 8, lines 1-10, page 16, lines 7-10, and original Claim 19.

In the Office Action, Claims 1, 3-4, 9-14 and 20-22 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over amended Claims 1-2, 5-10 and 14-19 of US Patent No. 7,318,832 in view of US Patent No. 6,773, 409 to Truckai et al ("Truckai"). Notwithstanding, the independent claims of the present application have been amended to make them patentably distinct from the issued claims of the '832 patent. Therefore, it is respectfully requested that the present provisional rejection be withdrawn for at least these reasons.

Claims 1-22 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 5,669,544 issued to Schulze et al. ("Schulze") in view of U.S. Patent No. 6,984,220 issued to Wuchinich and Truckai. Independent Claims 1, 18 and 21 have been amended in a manner which is believed to overcome the cited references, taken alone or in any proper combination.

Applicants' independent Claims 1, 18 and 22 include recitations directed to pivoting of said second jaw member into and out of operative relationship with said first jaw member, wherein the second jaw member pivots about a first axis substantially simultaneously

with rotation of the first axis about a second axis disposed at an angle relative to the first axis. The recited movement of the second jaw member as it moves into and out of the operational relationship with the first jaw member causes the second jaw member to move through two axes of movement relative to the first jaw member. A result of this recited movement is that a surgeon operating the tool may first position the second jaw in a non-operational relationship with the first jaw member and further position the first jaw member relative to the tissue to be operated on, enabling the surgeon to visualize the tissue without the second jaw member obstructing the surgeon's view of the tissue or the first jaw member. The surgeon operates the tool to move the second jaw member into the operational relationship with the first jaw member, with the surgeon having the ability to visualize the tissue to be operated on without the second jaw member obstructing the surgeon's view of the tissue or the first jaw member until the second jaw member actually reaches the position in which it is in the operational relationship with the first jaw member.

Schulze is directed to a surgical instrument having a shaft 830 with an anvil 840 and a lower jaw 832. Anvil 840 includes an upper jaw 842. The upper and lower jaws open and close with respect to one another by rotating rotation knob 820 which rotates tube 838 rotatably mounted to shaft 830. Anvil 840 is pivotably mounted to the lower jaw 832 at a pivot point such as pin 839 embedded in a slot or a hole in lower jaw 832. Where the pin 839 is a slot the pin may move in a transverse direction, but the pin does not rotate. Alternatively where the shaft 830 is fixed with respect to the anvil 840 the pin 839 may be rotatably mounted within the shaft 830, which allows the pin to pivot while the pin remains stationary. Schulze does not disclose or suggest "the second jaw member pivots about a first axis substantially

simultaneously with rotation of the first axis about a second axis disposed at an angle relative to the first axis,” as set forth by the recitations of Applicants’ independent Claims 1, 18 and 22.

The Examiner relies on Truckai in an attempt to cure the deficiencies of Schulze. The Examiner states that Truckai teaches a surgical system for applying ultrasonic energy, the system including a first and second jaw member, the second jaw member having grip or angled cutting elements. The first jaw member has a surface having structures having a complementary shape to that of the other jaw. The jaw members have pin portions that cooperate in receiving bores in an introducer sleeve which allows the jaw members to pivotably move between a first open position and a second closed position. The jaw members pivot about a stationary axis. Therefore, Truckai does not disclose or suggest “the second jaw member pivots about a first axis substantially simultaneously with rotation of the first axis about a second axis disposed at an angle relative to the first axis,” as recited by Applicants’ independent Claims 1, 18 and 22.

The Examiner further relies on Wuchinich in an attempt to cure the deficiencies of Schulze and Truckai, stating that “Wuchinich teaches an apparatus that provides simultaneous longitudinal and torsional ultrasonic vibrations.” Wuchinich is directed to an ultrasonic tissue dissection system providing combined longitudinal and torsional motion of tips, together with irrigation and aspiration. The combined longitudinal and torsional motion is provided by a longitudinal-torsional resonator (L-T resonator) which converts the longitudinal vibration 23 into a longitudinal-torsional vibration 24 at tip 22 (Column 4, lines 65-66). Wuchinich does not disclose or teach the tip 22 having jaw members or a “second jaw member pivoting about a first axis substantially simultaneously with rotation of the first axis about a

second axis disposed at an angle relative to the first axis,” as set forth by the recitations of Applicants’ independent Claims 1, 18 and 22.

Accordingly, neither Schulze, Wuchinich nor Truckai disclose or suggest pivoting of said second jaw member into and out of operative relationship with said first jaw member, wherein the second jaw member pivots about a first axis substantially simultaneously with rotation of the first axis about a second axis disposed at an angle relative to the first axis, as set forth by the recitations of Applicants’ independent Claims 1, 18 and 21. The advantage of moving the second jaw member through two distinct axes relative to the first jaw member is not realized, nor is the advantage of allowing a surgeon to visualize tissue and the first jaw member until the second jaw member is actually the operative relationship with the first jaw member. Since there is no teaching or suggestion in the cited references of Applicants’ newly added limitations in independent Claims 1, 18 and 21, independent Claims 1, 18 and 21 are patentable over Schulze, Truckai and Wuchinich, taken alone or in any proper combination. Hence, withdrawal of the rejection under 35 U.S.C. Section 103(a) with respect to independent Claims 1, 18 and 21 and allowance thereof are respectfully requested.

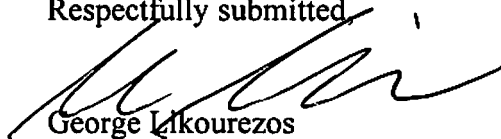
Dependent Claims 2-17, 20 and 22 depend from either independent Claims 1, 18 and 21, and therefore contain the limitations of independent Claims 1, 18 and 21. Therefore, for at least the same reasons given for independent Claims 1, 18 and 21, withdrawal of the rejection under 35 U.S.C. Section 103(a) with respect to dependent Claims 2-17, 20 and 22 and allowance thereof are respectfully requested.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application and not previously withdrawn, namely,

Claims 1-18 and 20-30, are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicants' undersigned attorney at (631) 501-5706.

Respectfully submitted,



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